

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUREKA COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; KENNETH F. BENSON,
INDIVIDUALLY; DIAMOND CATTLE
COMPANY, LLC, A NEVADA LIMITED
LIABILITY COMPANY; MICHEL AND
MARGARET ANN ETCHEVERRY FAMILY,
LP, A NEVADA REGISTERED FOREIGN
LIMITED PARTNERSHIP,

No. 61324

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Tracie K. Lindeman

District Court of Nevada
Clerk of Supreme Court
CV1108155; CV108156;
CV1108157; CV1112164;
CV1112165; CV1202170

Appellants,

v.

THE STATE OF NEVADA State Engineer;
THE STATE OF NEVADA DIVISION OF
WATER RESOURCES; AND KOBEH
VALLEY RANCH, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Respondents.

ON APPEAL FROM ORDER DENYING PETITIONS FOR JUDICIAL REVIEW
BY THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

RESPONDENT KOBEH VALLEY RANCH'S APPENDIX

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State of Nevada, Division of Water Resources, Volume IV - Transcript of Proceedings, dated October 16, 2008	Vol. I	001-002

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d), I hereby certify that I am an employee of Parsons
3 Behle & Latimer, and that on this 4th day of February, 2013, I served a true and
4 correct copy of the foregoing **RESPONDENT KOBEH VALLEY RANCH'S**
5 **APPENDIX** to be served on the following parties as outlined below:
6

7 ***By E-Mail Only:***

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20 *Company, and Etcheverry Family*

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28

CERTIFIED COPY

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

In the Matter of Application Nos.:

70181, 70819, 70820, 70821, 70822, 70823,
70824, 70825, 70826, 70827, 72695, 72696,
72697, 72698, 73545, 73546, 73547, 73538,
73549, 73550, 73551, 73552, 74587, 75979,
75980, 75981, 75983, 75983, 75984, 75985,
75986, 75987, 75988, 75989, 75990, 75991,
75992, 75993, 75994, 75995, 75996, 75997,
75998, 75999, 76000, 76001, 76002, 76003,
76004, 76005, 76006, 76007, 76008, 76009,
76364, 76365, 76483, 76484, 76485, 76486,
76744, 76745, 76746, 76802, 76803, 76804,
76805, 76989 and 76990 to appropriate the
public waters of an underground source
within Kobeh Valley Hydrographic Basin
(#139), Diamond Valley Hydrographic Basin
(#153) and Pine Valley Hydrographic Basin
(#053).

VOLUME IV - TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

THURSDAY, OCTOBER 16, 2008

CARSON CITY, NEVADA

Reported by:

CAPITOL REPORTERS
Certified Shorthand Reporters
BY: MARY E. CAMERON, CCR, RPR
Nevada CCR #98
410 East John Street, Ste. A
Carson City, Nevada 89706
(775) 882-5322

—CAPITOL REPORTERS (775) 882-5322—

1 Water declines in the valley fill aquifer will be
2 mitigated by redistributing withdrawals of between four and
3 eight supply wells. If we need to, we'll go further. We'll
4 extend the pipelines out to the remote areas, more remote
5 sources in Kobeh Valley.

6 That would be our Kobeh west area where again we
7 are pretty confident that we've done testing and we can pick
8 up a couple thousand gallons per minute out there. The
9 Bobcat Ranch area where there's a tremendous water supply
10 potential that's already been proven. Development of one or
11 more wells in the Risi Ranch area I would only see being done
12 as a last resort.

13 Q. Why is that?

14 A. Because we don't want to develop groundwater down
15 there unless we have to, and I am reasonably certain that the
16 water is available from other areas. From the beginning of
17 this project I wanted to stay away from Risi Ranch and that's
18 why we've spend millions of dollars exploring to make sure
19 that we have the water available.

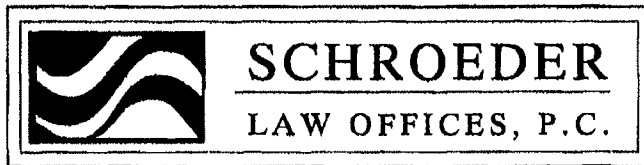
20 One of the keys, Mr. De Lipkau, is the mine has a
21 portfolio of water available, that they have options
22 available. They can't be in a situation where the impacts
23 start occurring and they are threatened with having to shut
24 down or suspend operations.

25 We want them to be in a situation to say we knew

Laura A. Schroeder
Licensed in Oregon, Idaho,
Nevada and Washington

V. Scott Borison, Ph.D.
Certified Legal Manager

Daryl N. Cole
Office Manager



Licensed in Oregon and Nevada:

Courtney D. Duke
Wyatt E. Rolfe
Therese A. Ure

February 11, 2011

VIA U.S. MAIL

Nevada Division of Water Resources
Hearing Section
901 S. Stewart St., Suite 2002
Carson City, NV 89701

RECEIVED
2011 FEB 14 AM 11:03
STATE ENGINEERS OFFICE

RE: IN THE MATTER OF KOBEH VALLEY RANCH, LLC
APPLICATIONS: 79934, 79935, 79936, 79937, 79938, and 79939

Dear Hearing Section:

Enclosed, please find the original and one copy of Protestant Kenneth F. Benson's
Closing Argument / Proposed Order in the above captioned matter.

If you have any questions regarding this filing, please contact our office.

Very truly yours,

SCHROEDER LAW OFFICES, P.C.

Therese A. Ure

TAU:mh

Enclosures

cc: Tim Wilson, P.E., Hearings Officer (*courtesy copy-via electronic mail*)
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(P0182855, 1125.00 KAW)

R.A.- 003

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9 IN THE OFFICE OF THE NEVADA STATE ENGINEER
10 OF THE STATE OF NEVADA

11
12 IN THE MATTER OF KOBEH VALLEY
13 RANCH, LLC APPLICATIONS:

14 79934, 79935, 79936, 79937, 79938, and
15 79939

PROTESTANT KENNETH F. BENSON'S
CLOSING ARGUMENT/
PROPOSED ORDER

16 Protestant Kenneth F. Benson, by and through attorneys Laura A. Schroeder and Therese
17 A. Ure of Schroeder Law Offices, P.C., and pursuant to the Hearing Officer's order, hereby
18 submit the following Closing Argument / Proposed Order.

19 INTRODUCTION

20 This is a case about the public waters of the State of Nevada and the right to use them.
21 The evidence shows a significant and irreparable harm to the water resources of this state.
22 Protestants, have shown that the Applicant's proposed use (water used for molybdenum mining)
23 will dry up streams, dewater the carbonate block, draw down water tables, dry up wells, and
24 cause others to chase the ground water. There will be a substantial harm to certificated and
25 senior priority water right holders in the surrounding hydrographic basins. Applicant's water

26 ///

Page 1 – PROTESTANT KENNETH F. BENSON'S CLOSING ARGUMENT / PROPOSED ORDER



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{P0101107; 1125.00 KAW }

R.A.- 004

1 applications should be denied or conditioned to protect existing rights through curtailment,
2 management, monitoring, and mitigation.

3 HISTORY OF THE CASE

4 On June 15, 2010, Applicant Kobeh Valley Ranch, LLC ("Applicant") filed applications
5 79934 through 79939 to change the point of diversion, place of use, and manner of use of
6 groundwater previously applied for or appropriated under existing permits and certificates.¹ The
7 existing permits or certificates and applications sought to be changed by Applications 79934
8 through 79939 were the subject of a prior administrative hearing before representatives of the
9 Office of the State Engineer of Nevada held from October 13, 2008 through October 17, 2008,
10 resulting in State Engineer's Ruling No. 5966. Multiple Petitions for Judicial Review of Ruling
11 No. 5966 were filed and, on April 20, 2010, the Seventh Judicial District Court of the State of
12 Nevada granted the petitions, vacated Ruling No. 5966, and remanded the matter to the State
13 Engineer for further hearing.²

14 On July 28, 2010, timely protests were filed by Kenneth F. Benson ("Benson") to each of
15 the above referenced applications on the following summarized grounds:³

16 1. Forthcoming USGS studies indicate that there is a greater contribution from the
17 Kobeh Valley groundwater basin to the Diamond Valley water basin than has previously been
18 recognized by the State Engineer.

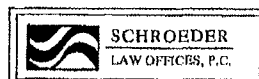
19 2. The perennial yield of the Kobeh Valley Basin will not support the annual acre feet
20 withdrawal of consumptive use water cumulatively requested by the Applicant.

21 ///

22 ¹ See Exhibits 122-125 and 21-22, public administrative hearings before the State
23 Engineer *In Re Applications 72695, 72696, etc.* (Dec. 6-7 and 9-10, 2010)(hereinafter
"Exhibits").

24 ² Ruling #5966, *In Re Applications 70818, 70819, etc.* (Mar. 26, 2009)(vacated Apr. 20, 2010);
25 Findings of Fact, Conclusions of Law, and Order Granting Petition for Judicial Review, Vacating Ruling
#5966, and Remanding Matter for New Hearing, *Eureka County v. State Engineer* (Apr. 20, 2010)(CV-
26 0904-122).

³ See Exhibits 312-317.



1 On December 6-7, 2010, and continuing on December 9-10, 2010, a public administrative
2 hearing was held in the matter of the above referenced applications before representatives of the
3 Office of the State Engineer of Nevada.

4 FINDINGS OF FACT: GENERAL

5 On June 15, 2010, Applicant submitted applications 79911 through 79942 to the State
6 Engineer for the purpose of securing sufficient water to operate an open pit molybdenum mine
7 and mill to be located at Mt. Hope, approximately 20 miles northwest of the Town of Eureka,
8 Eureka County, Nevada.⁴ The mine has a projected lifespan of 44 years and, according to the
9 Applicant, will require approximately 11,300 acre feet of water annually ("afa"), or
10 approximately 7,000 gallons per minute, pumped on a continuous basis.⁵

11 Applicant proposes to supply the molybdenum mine with water primarily by piping
12 groundwater from 10 proposed groundwater wells located in a well field approximately 8 miles
13 southwest of the mine site in north-central Kobeh Valley.⁶ As of this date, only five of the
14 Applicant's ten proposed production wells have been drilled and/or tested; the locations of the
15 remaining five wells, representing approximately 56% of the water requested by the Applicant,
16 have not been determined.⁷

17 Despite the stated needs of the Applicant with regard to the points of diversion and
18 amount of water required for mine operations, pending applications submitted by the Applicant
19 request approximately 24 points of diversion.⁸ Notwithstanding any other pending applications
20 submitted by the Applicant, Applications 79911 through 79942 request a cumulative total of
21

22 ⁴ See Exhibits 99-125 and 21-25; Exhibit 40 at 11.

23 ⁵ Exhibit 40 at 11. *Note that due to conversion from agricultural to consumptive use, these
24 numbers may be inflated.

25 ⁶ Exhibit 39, Volume I at ES-2, ES-4, 4, 6; Exhibit 39, Volume II, Appendix B at 2; see
26 Transcript at pg 158 ln. 2-4 (Dec. 7, 2010).

⁷ Transcript at pg 154 ln. 8 through pg 155 ln. 18 (Dec. 7, 2010); Exhibit 39, Volume I at 6.

⁸ See Exhibits 21-25 and Exhibits 43-125; Transcript at pg 156 ln. 21 through pg 158 ln. 24 (Dec.
7, 2010).



1 32,745.71 afa, and a cumulative diversion rate of 32,116.2 gpm.⁹ Applicant called no witness at
2 hearing to outline the intricacies of each water application or discuss the amount of water
3 requested versus the amount of water needed.

4 Mt. Hope, the site of the proposed mine, is located within the Diamond Valley Regional
5 Flow System, which consists of six (6) hydrographic basins: Antelope, Diamond, Kobeh, and
6 North and South Monitor Valleys, as well as Stevens Basin.¹⁰ The basins within the Diamond
7 Valley Regional Flow System are connected by surface and/or groundwater flow.¹¹ Diamond
8 Valley is the terminus of the flow system and, as such, receives groundwater inflow from Kobeh
9 and Pine Valleys, as well as possibly from Antelope Valley and Stevens Basin.¹²

10 The Nevada Division of Water Resources ("NDWR") has established the perennial yields
11 of Kobeh and Diamond Valleys as approximately 16,000 afa and 30,000 afa, respectively.¹³
12 Committed groundwater rights in Diamond Valley total 132,136 afa, although crop inventories
13 suggest current pumping may be only 87,000 afa.¹⁴ Due to the imbalance between the perennial
14 yield and actual pumping, there is a current state of overdraft in Diamond Valley.

15 In conjunction with Eureka County, the U.S. Geological Survey ("USGS") is currently
16 engaged in an ongoing multiphase hydrogeologic study of the Diamond Valley Flow System.¹⁵
17 An interpretive report relating the results of the study will be published in 2013.¹⁶ The USGS
18 study is intended to, among other things, provide hydrologists with a better understanding of the
19

20 ⁹ See Exhibits 99 through 125 and Exhibits 21 through 25. Noting these figures are based on a
21 raw addition of the amounts requested in the applications and do not account for that amount of water
22 which is non-transferable due to consumptive use calculations, or otherwise.

23 ¹⁰ Exhibit 39, Volume I at ES-2; Exhibit 40 at 13.

24 ¹¹ Exhibit 39, Volume I at ES-2; Exhibit 40 at 13.

25 ¹² Exhibit 39, Volume I at 61-63.

26 ¹³ Exhibit 39, Volume I at 19; Exhibit 137 at 56.

¹⁴ Exhibit 39, Volume I at 19-20.

¹⁵ Transcript at pg 51 ln. 17-22, pg 88 ln. 16 through pg 89 ln. 3, pg 99 ln. 14-18 (Dec. 10, 2010);
see Exhibit 150; see also, Exhibit 309.

¹⁶ Transcript at pg 129 ln. 14 -23 (Dec. 9, 2010).



1 flow system and a better estimate of the amount of subsurface flow from Kobeh to Diamond
2 Valley. Toward that end, phase two of the study includes: 1) drilling of monitoring wells in the
3 vicinity of Devil's Gate to more adequately define subsurface outflow from Kobeh Valley to
4 Diamond Valley, 2) drilling monitoring wells in Diamond Valley to the north of Whistler Peak to
5 aid in assessment of possible outflow through this portion of Sulphur Spring Range, 3) operation
6 of micro meteorological stations in Diamond and Kobeh Valleys, and 4) the detailed mapping of
7 phreatophyte vegetation in order to review and update the water budgets for the basins.¹⁷

8 Applicant acknowledges an unknown amount of groundwater flows between Kobeh
9 Valley and Diamond Valley at a depth through the bedrock north of Whistler Mountain,
10 particularly the deep portions of the range composed of carbonate rocks, in addition to the
11 shallow subsurface flow and carbonate flow of intermediate depth near Devil's Gate.¹⁸
12 Even the conservative estimate of 1,583 afa used in the Applicant's groundwater model amounts
13 to approximately 13% of the total recharge to southern Diamond Valley.¹⁹ Based on the state of
14 overdraft in Diamond Valley and the hydrologic connection between Diamond Valley and
15 Kobeh Valley, vastly increased consumptive use pumping of groundwater from Kobeh Valley
16 may detrimentally impact water levels in Diamond Valley, and by extension, water rights in
17 Diamond Valley.

18 FINDINGS OF FACT: SPECIFIC

19 Well 206

20 Applications 79934 through 79939 each list Well 206 as the requested point of
21 diversion.²⁰ Although the Applicant's base case model scenario assumes only 350 gpm will be
22 pumped from Well 206 for a projected total of 5% of the mine's water supply, Applications
23 79934 through 79939 request a total cumulative diversion rate of 5.98 cfs, or 2,684 gpm, and a

24 ¹⁷ Exhibit 39, Volume I at 11-12.

25 ¹⁸ Exhibit 39, Volume I at 74-75; Transcript at pg 78 ln. 1 through pg 79 ln. 14 (Dec. 7, 2010).

26 ¹⁹ Exhibit 502 at 3.



1 total cumulative duty of 3586.29 afa, which represents more than 31% of the 11,300 acre feet
2 required for the Mt. Hope mine operations.²¹

3 Well 206 draws from a carbonate rock aquifer with relatively high transmissivity.²²
4 Applicant conducted a 32 day constant rate aquifer test on Well 206 from April 10 to May 12,
5 2008 at a target pumping rate of 1,400 gpm.²³ Observed drawdown in Well 206 reached 30ft at
6 the end of the 32 day pumping test.²⁴ Although Well 206 recovered more than 20 feet directly
7 following shutdown, static water levels did not return to pre-testing levels and a residual
8 drawdown of 4.5 feet was observed.²⁵

9 Well 206 is uniquely situated in that it is located within roughly 75 feet of a private
10 ranch, Roberts Creek Ranch, owned by the Etcheverry Limited Family Partnership.²⁶ The
11 Etcheverry Family possesses multiple water rights for Roberts Creek Ranch, and also maintains
12 at least one domestic well on the property.²⁷ Following the Applicant's pumping test of Well
13 206 in 2008, the Etcheverry family observed that water levels in nearby Nichols Springs were cut
14 by half and have never fully recovered.²⁸ Furthermore, ever since the Applicant's pumping test
15 of Well 206, the Etcheverry family has been forced to haul water to the cattle that were
16 previously supplied by Nichols Springs.²⁹

17 Even based on the "conservative" pumping of Well 206 at 350 gpm, the Applicant's
18 scientific analysis indicates that there will be 205 feet of drawdown at the end of the mine's 44

19 (Cont.)

20 ²⁰ See Exhibits 21-22 and 122-125.

21 ²¹ See Exhibits 21-22 and 122-125.

22 ²² Exhibit 40 at 19, 53.

23 ²³ Exhibit 40 at 48, 74, Table 10.

24 ²⁴ Exhibit 40 at 48.

25 ²⁵ Exhibit 40 at 48.

26 ²⁶ Exhibit 526; Transcript at pg 25 ln. 22 through pg 26 ln. 2, pg 34 ln. 9-15 (Dec. 9, 2010).

27 ²⁷ Transcript at pg 33 ln. 4-6 (Dec. 9, 2010).

28 ²⁸ Transcript at pg 34 ln. 16 through pg 35 ln. 22, pg 42 ln. 8 through pg 44 ln. 3 (Dec. 9, 2010).

29 ²⁹ Transcript at pg 42 ln. 8-18 (Dec. 9, 2010).



1 year pumping period.³⁰ Applicant's own witness, Jack Childress acknowledged that the net
2 effect of Applicant's proposed pumping from Well 206 will be to "dewater" the carbonate block
3 that houses Well 206.³¹ Indeed, Applicant's experts indicate pumping over time will cause
4 impacts to multiple springs and stock watering wells on the floor of Kobeh Valley.³² In addition
5 to the water rights the Applicant identified that may be impacted according to its projected ten
6 (10) foot drawdown contour, an additional five (5) wells and two (2) springs are within the area
7 of impact if a five (5) foot drawdown contour is used.³³ The ten (10) foot drawdown contour
8 was chosen by Applicant as a threshold for analyzing impacts for the Bureau of Land
9 Management's Environmental Impact Statement process.³⁴ The State Engineer can consider the
10 Applicant's pumping effects using the five (5) foot drawdown contour.

11 RULE OF THE CASE

12 Nevada Revised Statute § 533.370(5) provides that the State Engineer **shall** reject an
13 application: 1) where there is no unappropriated water in the proposed source of supply, 2) where
14 the proposed use conflicts with existing water rights or with protectable interests in existing
15 domestic wells, or 3) threatens to prove detrimental to the public interest.³⁵

16 Existing water rights to the use of underground water are specifically recognized in
17 Nevada Revised Statute § 534.100. Nevada Revised Statute § 534.110 provides that it is a
18 condition of each appropriation of ground water that the right allows for a **reasonable** lowering
19 ///

20
21 ³⁰ Exhibit 39, Volume II, Appendix B at pg 2.

22 ³¹ Transcript at pg 39 ln. 25 through pg 40 ln. 2 (Dec. 7, 2010)("What we're going to be doing []
is basically dewatering the carbonate block that houses 205, 206, 213, 214, and 215. Water levels are
going to drop in that block.").

23 ³² Transcript at pg 187 ln. 7-16 (Dec. 6, 2010).

24 ³³ See Exhibit 502 at 4-10.

25 ³⁴ Transcript at pgs 73-74 (Dec. 10, 2010).

26 ³⁵ NRS § 533.370(5)(emphasis added); see also, NRS § 534.110(3)("The State Engineer shall
determine whether there is unappropriated water in the area affected and may issue permits only if the
determination is affirmative.").



1 of the static water level at the appropriator's point of diversion.³⁶ However, the State Engineer
2 may grant permits to applicants later in time where the proposed later appropriations cause the
3 water level to be lowered at the point of diversion of a prior appropriator **only so long as** any
4 protectable interests in existing domestic wells and the rights of holders of existing
5 appropriations can be satisfied.³⁷

6 Furthermore, Nevada Revised Statute § 533.3705 provides that upon approval of an
7 application to appropriate water, the State Engineer may limit the initial use of water to a
8 quantity less than the total amount approved and authorize the use of additional water at a later
9 date if additional evidence demonstrates that the additional amount of water is available and may
10 be appropriated. In making this determination, the State Engineer may establish a period during
11 which additional studies may be conducted or additional evidence provided to support the
12 application.³⁸

13 CONCLUSIONS OF LAW

14 There is substantial evidence to indicate that subsurface groundwater flow from Kobeh
15 Valley to Diamond Valley is a material source of recharge to Diamond Valley. In light of the
16 uncertainty regarding the nature and amount of this subsurface recharge, and in consideration of
17 the forthcoming USGS study of the Diamond Valley Flow System, Applicant's proposal to
18 vastly increase consumptive use groundwater pumping in Kobeh Valley poses a real and material
19 risk of overappropriation in Kobeh Valley and injury to water right holders in Diamond Valley.

20 The predicted drawdown levels from Applicant's groundwater pumping scheme, even in
21 the most conservative base case scenario, will result in significant harm to existing water right
22 holders. More specifically, the predicted drawdown of 205 feet in Well 206 and "dewatering" of

23 ///

24
25 ³⁶ NRS § 534.110(4)(emphasis added).

26 ³⁷ NRS § 534.110(5)(emphasis added).

³⁸ NRS § 533.3705(1).



1 the carbonate rock aquifer below it as a result of Applicant's proposed appropriations is an
2 unreasonable lowering of static water levels as a matter of law.

3 To the extent Applicant's requested appropriations are granted in whole or in part, the
4 total cumulative water allowed to pump must not exceed the actual need by Applicant, and
5 should be limited to that amount.

6 To the extent Applicant's requested appropriations are granted in whole or in part,
7 enactment of a comprehensive monitoring, management, and mitigation plan, including
8 provision for cessation of pumping upon the happening of stated events, must be a condition
9 precedent to any pumping in order to protect existing water right holders in both Kobeh and
10 Diamond Valleys.

11 CONCLUSION

12 As the Applicant's proposed appropriations conflict with existing water rights and will
13 cause an unreasonable lowering of static water levels, Applications 79934 through 79939 must
14 be DENIED.

15 Any amount of water granted to Applicant must not exceed the amount actually required.
16 Any additional amount of water granted would be speculative in nature.

17 Any amount of water granted to Applicant must be subject to reduction based on findings
18 and incorporation of the forthcoming USGS study.

19 The State Engineer must consider the Applicant's effect on the water table and surface
20 water sources at the five (5) feet contour levels.

21 ///

22 ///

23 ///

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1 If any amount of water is granted to Applicant, a firm monitoring, management, and
2 mitigation plan must be required to protect the water resources of the State of Nevada. Further,
3 Protestant Benson requests to be an active participant in any monitoring, management, and
4 mitigation plan that may be required as a condition of the permit.

5
6 DATED this 11th day of February, 2011.

7
8 SCHROEDER LAW OFFICES, P.C.

9
10 

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18 Attorneys for Protestant Kenneth F. Benson
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2011, I caused a copy of the foregoing:
PROTESTANT KENNETH F. BENSON'S Closing Argument / Proposed Order to be served as follows:

Via United States First Class Mail (with courtesy copies by electronic mail):

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